

Draft Cooperation Agreement
between
the Indian Ocean Tuna Commission
and the
Memorandum of Understanding on the Conservation and Management
of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia

In effect since 2001, the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia (IOSEA Marine Turtle MOU) is a specialized intergovernmental agreement concluded under the auspices of the Convention on the Conservation of Migratory Species of Wild Animals (CMS). At present, the MOU has 35 Signatory States, of which 25 are also members of the IOTC.

As outlined in document [IOTC-2022-WPEB18-27](#) in more detail, MOU Signatory States in their Work Programme 2020-2024, and IOTC Contracting Parties in Resolution 12/04, expressed the will to cooperate in order to manage the adverse effects of fishing in the Indian Ocean on marine turtles. In order to formalize the long-standing informal cooperation, the Secretariat of the IOSEA Marine Turtle MOU presented a draft Letter of Intent to the WPEB18 in 2022, and it was agreed to forward this matter to the Scientific Committee.

Given that most IOTC collaboration arrangements are flexible with respect to commitment, do not have strict legal arrangements, and do not involve the transfer of funds between parties, the FAO Legal Office Counsel subsequently advised the Commission that a FAO Cooperation Agreement could be a more suitable instrument for such cases. Subsequently the LOI was replaced with the Draft Cooperation Agreement presented below with no substantial changes to the operational text of the previously proposed arrangement. It is based on the template provided by the FAO.

**DRAFT
Cooperation Agreement**

between the

Food and Agriculture Organization of the United Nations (FAO)

and the

***Memorandum of Understanding on the Conservation and Management
of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia
(IOSEA Marine Turtle MOU)***

on cooperation and coordination of activities without transfer of funds

This Cooperation Agreement ('the Agreement') establishes a framework for cooperation and coordination between the Food and Agriculture Organization of the United Nations ('FAO') and the Memorandum of Understanding on the Conservation and Management of Marine Turtles and their Habitats of the Indian Ocean and South-East Asia ('IOSEA Marine Turtle MOU') (collectively referred to as 'the Parties' and individually also as a 'Party') in the implementation of their activities related to the Indian Ocean Tuna Commission MTF/INT/661/MUL ('the Project') with no transfer of resources.

Article 1 – Scope and areas of cooperation

1.1 The Parties agree to cooperate and coordinate the implementation of their respective activities ('the implementation activities') as described in the attached Annex I, which forms an integral part of this Agreement. The implementation of the activities undertaken by a Party is subject to that Party's rules, procedures, policies and administrative practice, including any requirements for internal clearances.

1.2 These Parties will cooperate as follows:

The Parties will cooperate to strengthen the monitoring and assessment of marine turtle bycatch and the implementation of proper and effective conservation and management measures to reduce it.

Article 2 – Coordinating mechanisms

2.1 Modalities for coordination between the Parties shall be those described in Annex I.

2.2 In addition, the Parties may hold bilateral meetings as needed for the purpose of developing and monitoring collaborative activities. Such meetings shall take place on an ad-hoc basis if required to discuss technical and operational issues related to furthering the objectives of the Agreement, and jointly review progress of work.

Article 3 – Resources

- 3.1 The present Agreement implies no financial or other resource commitment by either Party. The implementation of activities is subject to the availability of staff and financial resources. Each Party shall be fully and solely responsible for the funding of its activities under this Agreement, as well as the administration and management of those funds.
- 3.2 Although it is understood that this Agreement is concluded on the basis that there shall be no transfer of funds between the Parties if, in the course of implementation, it is considered that implementation could be enhanced or facilitated by the transfer of funds from one Party to other for activities under this Agreement, this transfer of funds shall be made under an appropriate separate agreement, to be negotiated in good faith between the Parties.

Article 4 – Relationship and responsibility of the Parties

- 4.1 Nothing in this Agreement shall be construed as creating a partnership, employment or agency relationship between the Parties.
- 4.2 Each Party shall be fully and solely responsible for the manner in which it carries out the implementation of activities for which it is responsible, as described in Annex I of this Agreement. Thus, a Party shall not be responsible for any loss, accident, damage or injury suffered or caused by the other party, or that other party's personnel, contractors, or sub-contractors, in connection with, or as a result of, the collaboration and coordination under this Agreement.
- 4.3 Each Party shall remain fully and solely liable to any third party, including any donors, for obligations entered into by that Party in connection with the implementation activities. It is understood that the obligations accepted by one Party with respect to any third party, including its donors, shall not extend to the other Party.

Article 5 – Confidentiality and use of logo, emblem or name

- 5.1 Neither Party nor its personnel shall communicate to any other person or entity any confidential information made known to it by the other Party pursuant to this Agreement nor shall it use this information to private or company advantage.
- 5.2 The Parties agree not to use in any press release, memo, report or other published disclosure related to this Agreement any of the other party's name, emblem and logo without prior written agreement by the Party concerned.

Article 6 - Intellectual Property Rights

- 6.1. Intellectual property rights, in particular copyright, in material such as information, software and designs, made available by the IOSEA Marine Turtle MOU and FAO to be used to carry out activities under this Agreement shall remain with the originating Party. Appropriate authorizations for use of such materials by the other Party will be addressed in the agreements concluded in accordance with Article 3.2 above.

- 6.2. All intellectual Property Rights in materials that should be developed under this Agreement such as, but not limited to, information, software and designs, will be addressed in the agreements concluded in accordance with Article 3.2 above.
- 6.3. Both Parties shall be duly acknowledged in any work resulting from the implementation activities under this Agreement and the wording of such acknowledgement shall be agreed between the Parties.

Article 7 – Commitment to respect FAO’s principles and values

- 7.1 The IOSEA Marine Turtle MOU agrees to respect FAO’s constitutional principles, values and policies, and warrants that nothing in its governance or operational activities, or those of its affiliates, is incompatible with them or with internationally recognized principles concerning human rights, the environment and anti-corruption as reflected in the United Nations Global Compact Principles.
- 7.2 The IOSEA Marine Turtle MOU warrants that it has zero tolerance for all forms of sexual wrongdoing and acknowledges that sexual exploitation and abuse and sexual harassment are incompatible with core values of the United Nations System. The IOSEA Marine Turtle MOU confirms that it has in place appropriate and effective mechanisms to prevent and address such conduct and that it will promptly inform FAO of allegations against its employees and any other persons involved in the implementation of activities in relation to this Agreement and which have been found to be credible under the IOSEA Marine Turtle MOU’s mechanisms.

Article 8 – Notices

- 8.1 All notices regarding, request and reports, or any other communication to the other Party, required under this Agreement, shall be given in writing and delivered in person or by registered mail to the addresses provided below:

For FAO:	Executive Secretary Indian Ocean Tuna Commission / NFITD Tel +248 4225494 IOTC-Secretariat@fao.org
For the IOSEA Marine Turtle MOU	Executive Secretary Convention on the Conservation of Migratory Species of Wild Animals Tel: +49 228 815 2491 iosea@un.org

- 8.2 Each Party shall promptly notify the other in writing of any anticipated or actual material changes that may affect the implementation of this Agreement.
- 8.3 Notice shall be considered as effected on the date of delivery to the addressee.

Article 9 – Settlement of disputes

- 9.1 Any dispute between the Parties concerning the interpretation and execution of this Agreement, or any document or arrangement relating thereto, shall be settled by negotiation between the Parties. Any differences that may not be so settled shall be brought to the attention of the Executive Heads of the two organizations for final resolution.
- 9.2 Any dispute between the Parties which is not settled amicably in accordance with the foregoing paragraph shall, at the request of either Party, be settled by arbitration in accordance with the UNCITRAL Arbitration Rules, as at present in force. Decisions of the arbitral tribunal shall be final and binding to the Parties and the arbitral tribunal shall have no authority to award punitive damages.
- 9.3 The conciliation and the arbitration proceedings shall be conducted in English and the place of arbitration shall be Rome, Italy. The Parties may request conciliation while the Agreement is in force or within a period not to exceed twelve (12) months after the expiry or the termination of the Agreement. The Parties may request arbitration not later than ninety (90) days after the termination of the conciliation proceedings.

Article 10 – Privileges and Immunities and Applicable Law

- 10.1 Nothing in this Agreement or in any document or arrangement relating thereto shall be construed as constituting a waiver of the privileges or immunities of FAO or the IOSEA Marine Turtle MOU, nor as extending any privileges or immunities of either Party to the other Party or its personnel.
- 10.2 This Agreement is governed solely by general principles of law to the exclusion of any single national system of law. General principles of law shall include the UNIDROIT General Principles of International Commercial Contracts 2016.

Article 11 – Entry into force, Termination, Amendment

- 11.1 This Agreement shall enter into force on the date of its signature by both Parties. If signature occurs on separate dates, it shall enter into force on the date of the last signature. The Agreement shall remain in force for a duration of five (5) years. The duration of the Agreement may be extended by mutual written consent of the Parties if deemed necessary.
- 11.2 This Agreement may be terminated by either Party upon three (3) months¹ written notice given to the other Party. In that event, the Parties will agree on measures required for the

¹ Proposed notice period to be adapted to the duration of the Agreement.

IOTC-2022-SC25-INF01

orderly conclusion of any ongoing collaborative activities and the settlement of any outstanding obligations.

11.3 This Agreement may be amended by mutual written agreement of the Parties. Such amendments shall enter into force one (1) month following notifications of consent by both Parties to the requested amendments or on a date otherwise agreed in writing for the amendment to enter into force.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties affix their signatures below.

<p>On behalf of FAO:</p>	<p>On behalf of the IOSEA Marine Turtle MOU:</p>
<p>Name:</p> <p>Title:</p> <p>Date:</p>	<p>Name:</p> <p>Title:</p> <p>Date:</p>

Annex I

1. Collaboration activities and implementation modalities

Background

IOTC Resolution 12/04 adopts the following provisions encouraging closer collaboration with the IOSEA Marine Turtle MOU:

14. CPCs are encouraged to collaborate with the IOSEA and take into account the IOSEA MoU including the provisions of the Conservation and Management Plan in the implementation of bycatch mitigation measures for marine turtles.

15. The IOTC and IOSEA secretariats are encouraged to intensify their collaboration and exchange of information on marine turtle issues in accordance with the protocols agreed by the Commission.

In line with the actions encouraged in IOTC Resolution 12/04, Signatory States of the IOSEA Marine Turtle MOU requested closer collaboration with IOTC relating to the following programmes contained in the MOU Conservation and Management Plan (CMP):

1.4 Reduce to the greatest extent practicable the incidental capture and mortality of marine turtles in the course of fishing activities

5.3 Enhance mechanisms for cooperation and promote information exchange

There is a lack of expertise within the Scientific Committee on marine turtle bycatch issues as well as a lack of data available on marine turtles at the IOTC Secretariat. This Cooperation Agreement seeks to improve the information available to the Scientific Committee as well increase the participation of experts on marine turtle issues in IOTC scientific meetings.

2. FAO's role and responsibilities

IOTC shall be responsible for the following:

- (1) Appoint one counterpart from among the staff of the IOTC Secretariat to be responsible for the overall supervision of the Collaboration and oversee the practical collaboration activities.
- (2) The IOTC Secretariat will ensure that all data sharing will be consistent with the provisions stipulated in Resolution 12/02 on Data Confidentiality Policy and Procedures. Accordingly, the IOTC Secretariat will ensure that permission is obtained from relevant CPCs to share any data that are not publicly available.

3. The IOSEA Marine Turtle MOU's role and responsibilities

The IOSEA Marine Turtle MOU shall be responsible for the following:

- (1) Appoint one counterpart from among the staff of the CMS Secretariat to be responsible for the overall supervision of the Collaboration and oversee the practical collaboration activities.
- (2) As appropriate, report to the IOTC's Working Party on Ecosystems and Bycatch on relevant activities.

4. Coordinating mechanisms

IOTC-2022-SC25-INF01

Interaction and information exchange through the scientific committees of both parties, as well as communication between the Secretariats.